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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/570,580	10/03/2006	Antonio Carlos Teixeira Alvares	062900204122-US0	9899
7278	7590	12/22/2009		
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			EXAMINER ELOSHWAY, NIKI MARINA	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 12/22/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/570,580

**Applicant(s)**

ALVARES ET AL.

**Examiner**

NIKI M. ELOSHWAY

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/22)  
Paper No(s)/Mail Date 3/1/06, 8/1/06
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

**DETAILED ACTION**

***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3-5 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. the claims are considered vague and indefinite for the following reasons:

(a) Claim 3 recites the limitation "the radial extension" in line 2. There is insufficient antecedent basis for this limitation in the claim.

(b) Claim 4 recites the limitation "the external radial extension portion" in line 2. There is insufficient antecedent basis for this limitation in the claim.

(c) Claim 12 recites the limitation "the annular lower wall" in line 4. There is insufficient antecedent basis for this limitation in the claim.

(d) The dependent claims not specifically mentioned are rejected as being dependent upon a rejected base claim since they inherently contain the same deficiencies therein.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Coyle et al. (U.S. 2,535,840). Coyle et al. teach a can for bulk products, comprising a tubular body 1 in metallic sheet, having at least one peripheral lateral wall, shown at lead line 1 in figure 1, and one annular upper wall 2 presenting an external edge 3 affixed to the peripheral lateral wall by a double seam (col. 2 lines 5-7). The annular upper wall also has an internal face turned to the interior of the tubular body 1 and an internal edge at 9 and 10 defining an opening. The lid is element 11 and is removably fitted and retained in the opening of the can, in order to close it. The annular upper wall has any point of its internal face disposed at a height, measured in the interior of the tubular body, at minimum equal to the height of another point of said internal face disposed in a radially external manner, aligned and adjacent in relation to said point, as shown in figure 5. The points of the annular upper wall which are circumferentially aligned are contained in a plane orthogonal to the central axis. The one portion of the upper annular wall which progressively and continuously increases is shown at lead line 4. The internal radial extension portion adjacent the opening is shown at lead line 7. The upwardly and outwardly bent internal edge is shown at lead line 9.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 6, 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coyle et al. (U.S. 2,535,840) in view of La Croce et al. (U.S. 3,814,277). Coyle et al. teach the cross section of the edge at 9 is defined by at least one portion of an arc of a circle with the center in a plane orthogonal to the axis of the tubular body and medianly sectioned by the plane. The lid has a peripheral lateral wall 12-15 externally provided with a circumferential cradle at 12 and 15 presenting a cross section in the form of an arc of a circle, which is shown in figure 3 between lead lines 9 and 15 and within which is fitted the portion in the form of an arc of a circle the circumferential rib 9.

Coyle et al. do not appear to teach that the upper section of an external peripheral flange is seated on the circumferential rib. It appears to be slightly vertically spaced from the circumferential rib. La Croce et al. teach that it is known to provide a lid which is seated on the circumferential rib (see element 36 in figure 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Coyle et al. with the external peripheral flange being seated on the circumferential rib, as taught by La Croce et al., in order to provide a tighter seal between the lid and the annular wall.

8. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coyle et al. (U.S. 2,535,840) in view of La Croce et al. (U.S. 3,814,277), as applied to claim 6 above, and further in view of von Holdt (U.S. 5,842,593). Coyle et al. do not teach the radial extensions, breakable connections and handles. Von Holdt teaches that it is known to provide a lid with radial extensions and breakable connections which secure handles to the lid (see figures 6-8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Coyle et al. with handles and handle attaching means, which include the radial extensions and breakable connections, as taught by von Holdt, in order to allow easy carrying of the container.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is cited for the structure of the annular top wall.

10. THIS ACTION IS NON-FINAL.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKI M. ELOSHWAY whose telephone number is (571)272-4538. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Niki M. Eloshway/  
Niki M. Eloshway  
Examiner  
Art Unit 3781

NME